IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4409 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATBHAI MANIBHAI DHOLAKIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4409 of 2004

MR NV ANJARIA for Petitioner No. 1

MR KP RAWAL, Ld. AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 24/02/2005

ORAL JUDGEMENT

With the consent of the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner is a practising lawyer at Bhuj. He was registered as Notary under the Notaries Act, 1952 (hereinafter referred to as the "Act"). It is the case of the petitioner that since 14.8.1988 he has been practising as Notary. It appears that on 12.10.2000, the period of registration was expiring. However, it is the case of the petitioner that on 26.1.2001, because of the devastating earth-quake the office and the residence of the petitioner was badly damaged and was classified as "G-5" category i.e. the building which cannot be used for residential purpose even after renovation. It is also the case of the petitioner that the entire office records including the certificate of the Notary were under debris and the petitioner had also to go out of the country in capacity as the District Governor, Rotary International. On 7.8.2002, the petitioner found that he had to forward the application for renewal. However, the renewal application was not submitted and, therefore, he forwarded the application for renewal. A copy of the said application dated 8.8.2002 is produced at Annexure "B" to the petition. It is also the case of the petitioner that as he was not aware about the expiry of the period of registration, in bonafide he has worked as Notary in the Bar Association camps held for helping the earth-quake affected persons for claiming the reliefs etc. However, after 8.8.2002 onwards he has not worked as Notary since it came to his knowledge that the renewal application was to be forwarded and there is a lapse on his part. It appears that thereafter there was further reminder by the petitioner on 11.11.2003, but as no decision was rendered by the State Government, the petitioner has approached this Court by preferring this petition.

3. On behalf of the State Government, affidavit-in-reply is filed by H.T.Vyas, Jt. Secretary, Legal Department, wherein it has been, inter alia, contended that as per the Circular dated 6.1.1997 issued by the Legal Department of the State Government the application for renewal of the certificate was required to be submitted within one month prior to the expiry of the term of the certificate and together with the same prescribed fee was also required to be submitted. The petitioner has remained negligent towards his duties for making application after the expiry of the period. It has been further submitted that the petitioner has no vested right for renewal of the certificate mechanically without considering the worthiness of the renewal of the certificate and it has been prayed to dismiss the

petition as the petitioner is not entitled to the relief.

4. Heard Mr.Anjaria, learned Counsel for the petitioner and Mr.Rawal, learned AGP for the respondent authority. Mr.Anjaria, learned Counsel appearing for the petitioner has relied upon the decision of this Court (Coram: M.S. Shah, J.) in case of "Firoz Battiwala (Adovate) v. State of Gujarat and Anr.", reported in 2001(1) GLH, 513 for contending that in the said decision the Government did not press for the circular and in any case, it has been held by the Court that since there is no statutory period of limitation and the only requirements which Court can read is that the application must be made within a reasonable time and the authority has to take a liberal view in deciding whether the application was made within a reasonable time or not and it has been further submitted by Mr.Anjaria that in the said case the delay of 68 days which was not condoned and the application for renewal of certificate was rejected, is found to be illegal by the Court and this Court has directed for the consequential order.

5. Mr.Rawal, learned AGP appearing for the State Government relied upon the decision of this Court (Coram: Ms.R.M.Doshit, J.) dated 4.2.2004 in case of "Liaqat Ali S. Pirzada v. State of Gujarat and Ors." (Special Civil Application No.1713/2003) for contending that if a person has continued to function as public notary and the renewal application is not made within time, the decision of the State Government of rejecting the application is upheld by this Court and, therefore, he submitted that the petitioner would not be entitled to the relief as prayed in the petition.

6. It appears that on factual aspects there is no dispute that the period has expired on 12.10.2000 and the petitioner has applied for renewal on 8.8.2002. There is also no dispute on the point that Bhuj was badly affected on account of the earth-quake and it is the case of the petitioner that on account of the earth-quake the papers of the petitioner in the office were lying under the debris. It is true that the petitioner could have applied within a period of one month before the expiry and at that time there was no earth-quake. In case of "Firoz M. Battiwala (Advocate)" (supra), it has been observed by this Court that the application can be made within a reasonable time. If the reasonable period in normal circumstances is considered, it would be around 3 months. However, if the ground is of badly affected by devastating earth-quake and non-availability of the papers on account of the damage caused to the house of

the petitioner and if the papers were lying under the debris and if on such ground a person could not apply for extension, it cannot be said to be as no sufficient cause for attracting the statutory powers of the State Government for considering the application for renewal of the licence with power to take lienient view on the aspect of limitation to make application. The decision of this Court in case of "Liaqat Ali S. Pirzada v. State of Gujarat & Ors." (supra) upon which the reliance is placed by the learned AGP was a case where after the expiry of the licence the person concerned had continued to function as notary for more than two years. It is the case of the petitioner in this petition that in bonafide he has continued to function as notary, more particularly in a camps arranged by Bar Association for helping to the earth-quake affected persons and, therefore, a humanitarian approach is required to be taken since all those who sincerely rendered service for helping out the ear-quake affected persons, if not appreciated, they are not required to be deprecated. As such, the petitioner himself is also one of the earth-quake affected persons as sought to be contended by him. Therefore, if the State Government finds that the petitioner has acted bonafide while functioning as notary after the expiry and such function is on account of helping the earth-quake affected persons, I find that a lenient view can be taken by the State Government on such ground.

7. It appears that as such the petitioner has also not forwarded the prescribed fee while forwarding the application dated 8.8.2002 and such fee, in any case, will be required to be paid by the petitioner even if the application is to be considered. Further, there is a lapse on the part of the petitioner in submitting the application. However, whether such lapse is a bonafide or for casual approach on the part of the petitioner may ultimately be finalised by the State Government, but it appears that even if the State Government finds that the lapse was due to bonafide action on the part of the petitioner, as in view of the observations made by this Court in case of "Firoz M. Battiwala (Advocate)" (supra), lenient approach is to be taken by the State Government, I find that while condoning the delay a suitable penalty of appropriate amount can be imposed for treating the application as having been filed within the time limit or within the period during which the Government can consider the application for renewal of the certificate. However, the circular of the Government dated 6.1.1997 can at the most be read as instructions to all notaries and it cannot be read as operating as a bar to the right of the person for renewal and, therefore,

the instructions issued as per the circular dated 6.1.1997 if considered in light of the decision rendered by this Court in case of (supra), it could be for the purpose of entertaining the renewal application.

8. Though the stand is demonstrated of the legal department in response to the application of renewal of certificate of the notary, but as no decision is taken, nor communicated to the petitioner, I find it proper to leave the matter at this stage, without concluding the aspects which may incidently arise for consideration of the State Government for entertaining the application of renewal and also for imposition of penalty for delay caused in making application and for finalising the application for renewal. However, considering the facts and circumstances, I find that the following directions shall meet with the ends of justice:

8.1) The petitioner shall forward the prescribed fee in support of his application dated 8.8.2002 to the State Government within four weeks from today.

8.2) After the prescribed fee is received by the State Government, the State Government shall examine the application of the petitioner and if required, the State Government may also call upon the petitioner to produce additional material in support of his claim that his house was damaged on account of devastating earth-quake and on the aspects that while acting in bonafide he has helped the earth-quake affected persons by functioning as notary.

8.3) It will be for the State Government thereafter to consider the matter in light of the observations made by this Court hereinabove and in accordance with law. If it is so demanded, the State Government may also give opportunity of hearing to the petitioner for convincing the authority in support of his claim for renewal of the certificate.

8.4) The aforesaid exercise shall be undertaken and completed within a period of three months from the date of receipt of prescribed fee by the State Government from the petitioner, and the order of this Court in this petition, whichever is later.

9. The petition is disposed of in terms of the

directions. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.

4.3.2005 (Jayant Patel, J.)

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